



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
on June 21, 2004

Date of Meeting: November 17, 2003

The Mayor and Council of the city of Tucson met in regular session, in the Mayor and Council Chambers in City Hall, 255 West Alameda, Tucson, Arizona, at 2:06 p.m., on Monday, November 17, 2003, all members having been notified of the time and place thereof.

1. ROLL CALL

The meeting was called to order by Mayor Walkup and upon roll call, those present and absent were:

Present:

José J. Ibarra
Carol W. West
Kathleen Dunbar
Shirley C. Scott
Steve Leal
Fred Ronstadt
Robert E. Walkup
Kathleen S. Detrick

Council Member Ward 1
Council Member Ward 2
Council Member Ward 3
Vice Mayor Ward 4
Council Member Ward 5
Council Member Ward 6
Mayor
City Clerk

Absent/Excused:

None

Staff Members Present:

Mike Letcher
Liz Miller
Ernie Duarte
Wayne Casper

Deputy City Manager
Assistant City Manager
Developmental Services Director
Procurement Department Director

Michael House

City Attorney

Dana DeLong
Carrie Fairchild
Debra Counsellor

City Clerk's Office
Recording Secretary
Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Reverend Gerry Nangle of the Johrei Fellowship, after which the pledge of allegiance was presented by the entire assembly.

Presentations

A. Recognition Award

Mayor Walkup presented an award of recognition and appreciation to the Tucson Police communications dispatchers and public service officers.

B. Lifetime Achievement Award

Mayor Walkup announced that many representatives from the Tucson Fire Department and from other fire departments around the state, as well as city department directors and other colleagues, were present for a very special presentation to Fire Chief Dan Newburn. He was pleased to announce that at their annual conference this past summer the Arizona Fire Chiefs Association chose Fire Chief Dan Newburn as the recipient of their lifetime achievement award. The award was being presented by Jeff Piechura, Chief of the Northwest Fire District, who is the chair of the association.

Chief Piechura said the Arizona Fire Chiefs Association was honoring Tucson Fire Chief Dan Newburn who, over his lifetime in service to the city of Tucson, has given so much, not only to the city, but to the state and nationally. He offered the association's thanks to Chief Newburn.

Chief Newburn thanked the association and the mayor and council for their continued support and recognized the fire chiefs from other cities in the state. He said if he had achieved anything during his career, it was because he had the support of great people, those in uniform and other people in the city.

Mayor Walkup said the council was privileged to have Mr. Newburn as chief and over the past three years, there had been some very notable events in the community. He was proud to have Chief Newburn leading his troops into the streets to provide the protection and support that was needed during very adverse times. It was a job well done.

Liz Miller, assistant city manager, on behalf of James Keene, city manager, said the manager's office thanked Chief Newburn not just for his leadership of the fire department, but for his leadership of the city's organization. They were honored to serve with him.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 594, dated November 17, 2003, was received into and made a part of the record. He also announced that this was the time for any member of the council to report on current events and asked if there were any reports.

A. New Aide for Ward Two

Council Member West announced that she had a new office aide, Anna Loquvam, who would be handling economic development, transportation, legislative issues, and the arts.

B. Town Hall Meeting

Council Member West announced that on November 18, 2003, at Eastside City Hall, she would be conducting a town hall meeting on solid waste issues, particularly the brush and bulky services. She invited the public to attend with their questions and comments, and learn more about the program.

C. Rio Nuevo Tour

Council Member West said on November 22, 2003, she was having a second popular Rio Nuevo tour, which is fully booked. However, anyone interested in a tour could call her office. She was going to be scheduling a third event after the holidays.

4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 595, dated November 17, 2003, would be received into and made a part of the record. He also announced that this was the time for the city manager to report on current events. There was no report.

5. CALL TO THE AUDIENCE

Mayor Walkup announced that this was the time any member of the public was allowed to address the mayor and council on any issue that was not on the agenda. He said there would also be a call to the audience at the end of the meeting. He asked that speakers be limited to three-minute presentations. This call to the audience was being limited to a total of fifteen minutes. He said he had received one written request to speak and advised that there would be a second call to the audience at the end of the meeting.

A. Landlord Responsibilities

Bill Katzel, said because of the severity and continuing nature of the testimony he was about to give he asked that he be allowed the full 5 minutes for his presentation. He submitted copies of the comments he made at the mayor and council meetings of October 27, and November 10, 2003, dealing with the deplorable conditions that currently exist at the Tucson city owned facility leased to the US Border Patrol at 3200 N. Silverbell. As an aside, he said the city had abdicated the safety responsibilities for 348 current families and 300 future families, plus the future tenants and clients of a 30,000 square-foot office building in its approval of the Kolb/Kibble rezoning by not making the developers' offer for a traffic light at the intersection of Kolb and Calle La Paz part of the rezoning approval conditions.

Also, he said the city played ping-pong for over a year with the safety of the children who attend Tully Elementary by not facilitating a speed table with the Tucson Unified School District across El Rio Drive, at the intersection with the local city park and the Boys and Girls Club across the street from the school.

The city also voted 4 to 3 not to mandate the relocation of the Kinder Morgan gasoline pipeline to a less populated area after it leaked in July. Mr. Katzel said the city's recent track record for the advocacy of health, welfare, and safety of its citizens is not very good.

Mr. Katzel said since the last time he addressed the governing body he filed a formal complaint with the director's office of the Pima County Health Department. He had provided additional copies of his October 27 and November 10, 2003, testimony to the ward five council office and he understood that had resulted in e-mail correspondence between Council Member Leal and Assistant City Manager Benny Young. He had provided copies of those same testimonies to the manager/editor of the *Arizona Daily Star* and the publisher of the *Tucson Citizen*.

He had facilitated a tour of the subject facility as originally promised by Council Member Ibarra, but not fulfilled by him or his office. He had provided, as requested by Director Owens of the Arizona Department of Environmental Quality, copies of his October 27 and November 10, 2003 testimony at the Saturday, November 15, 2003, Arizona Department of Environmental Quality, Kinder Morgan, and Silver Creek Community Park meeting. He toured the subject facility immediately after that meeting with James Glock, department of transportation director, and the city's environmental manager Murray.

Part of the site that the subject facility sits on has EPA super fund clean-up implications with the monitoring of a preexisting landfill. He said he would continue his unrelenting actions in this matter until the following remedies have been accomplished. The unauthorized dump established by the city on the subject premises and the residual site must be certified safe for human use. The safety and maintenance issues at the main building entrance to the subject facility must be cured and the entranceway certified safe for passage. The cause of death of the giant trees on the subject property must be determined with absolute certainty with such tests as soil boring or other reliable testing. The public must be assured that the death of those trees is not related to the Kinder Morgan gasoline leak or seepage from the Environmental Protection Agency super fund landfill clean-up site, and the dead trees must be removed. The posted "no dumping" signs under *Tucson City Code*, Section 15-11 that were taken down from the front wall of the subject facility since November 10, 2003, must be replaced with similar posted signs. The "no parking" signs for unauthorized vehicles, such as the 18-wheel tractor-trailer cited in his November 10, 2003 testimony must be appropriately posted. The men and women of the United States Border Patrol who put their lives on the line everyday protecting United States citizens and its borders against smugglers and murderers deserve better than the current conditions at the city owned and border patrol leased facility.

Council Member Ibarra asked staff to provide the mayor and council with a copy of the agreement the city has with the border patrol and let them know whose responsibility

and whose trash it is, so they will have a better understanding of the situation. He said he did go look at the property, but he did not ask Mr. Katzel's permission to do so.

Mayor Walkup asked if anyone else wished to address the council.

B. City Manger Form of Government

Robert Rues, said he wanted to remind everyone of the election that was held on November 4, 2003, which was a ceremonial mayoral election. He could not help but notice that in the last four years the population of the city had gone up by at least 25,000 or 30,000 while the voter participation has dropped in the last four years by close to 10,000. The city is going in the wrong direction and he blamed the city manager form of government for putting the voters to sleep. The city has serious problems when the population of the city is increasing and the voter participation is dropping below the already pathetic level that it has been. Indeed, in ward one only 26 percent of registered voters turned out to vote and overall the city had less than 40 percent. He said voter participation is something he knows about. When he sponsored the Fayetteville, Arkansas municipal reorganization from city manager to aldermanic government, voter participation in the first election jumped to a little under 70 percent of the total voters. He said Fayetteville has about 47,000 people and 21,000 voters in a municipal election.

Tucson has half a million people with 77,000 voters in a municipal election, so something is seriously wrong. It is just not acceptable to watch the voter base drop as the city grows. It is the city manager form of government. People are voting with their feet. They are saying no to the city manager form of government by not bothering to go out and vote, especially in the wards that are populated by the higher minority numbers. The city has a problem and it has to be dealt with. The only way the city is going to come out of its political slumber is if an election is held, and it will be soon, to give the voters a chance to switch to an aldermanic government and to give people in the city something to be excited about. He apologized for not having exact numbers, but said he would have everything he was talking about graphically illustrated on his ACCESS Tucson cable program next week. He would have exact numbers of population increase and voter participation drops. Something has to be done. The city cannot allow voter participation to slip and it cannot allow voter participation in ward one to descend to what looks like a low of 25 percent. The only thing that is going to bring people back to the polls is a chance to elect a new city government for the city and they will have it. He said a thousand fewer signatures would be needed on his petition next year because the voter participation has dropped. That is the only silver lining in the whole issue. Something has to give. The city cannot be governed with so few people voting.

Mayor Walkup asked if anyone else wished to address the council. There was no one.

6. CONSENT AGENDA – ITEMS A THROUGH C

Mayor Walkup announced that the reports and communications from the city manager on the consent agenda items would be received into and made a part of the record. He asked the city clerk to read the consent agenda items by title only without exception.

- A. REAL PROPERTY: ACQUISITION OF RIGHT-OF-WAY ON JACKSON STREET AND OCHOA STREET WEST OF STONE AVENUE FOR 6TH AVENUE/18TH STREET INTERSECTION IMPROVEMENTS PROJECT
- (1) Report from City Manager NOV17-03-591 W6
 - (2) Resolution No. 19720 relating to real property; authorizing the City Manager to acquire by negotiation, and the City Attorney to condemn if necessary, certain real property located on Jackson Street and Ochoa Street west of Stone Avenue for the Sixth Avenue/18th Street Intersection Improvements Project; and declaring an emergency.
- B. REAL PROPERTY: ACQUISITION OF RIGHT-OF-WAY ON THE 5TH STREET EAST OF ALVERNON WAY FOR BUS-RELATED ROADWAY IMPROVEMENTS
- (1) Report from City Manager NOV17-03-590 W6
 - (2) Resolution No. 19721 relating to real property; authorizing the City Manager to acquire by negotiation, and the City Attorney to condemn if necessary, certain real property located on Fifth Street east of Alvernon Way for bus-related roadway improvements; and declaring an emergency.
- C. INTERGOVERNMENTAL AGREEMENTS: WITH THE PIMA COUNTY BOARD OF SUPERVISORS FOR INDIVIDUAL DEVELOPMENT AND JOB TRAINING SERVICES
- (1) Report from City Manager NOV17-03-589 CITYWIDE
 - (2) Resolution No. 19724 relating to Intergovernmental Agreements; approving and authorizing Intergovernmental Agreements with Pima County for Individual Development/Job Training Services; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Leal, seconded by Council Member West, that consent agenda items A through C be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Consent agenda items A through C were declared passed and adopted by a roll call vote of 7 to 0.

7. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced that city manager's communication number 588, dated November 17, 2003, would be received into and made a part of the record. He asked the city clerk to read the liquor license agenda.

(b) New License(s)

- | | | |
|-----|--|---|
| (1) | BUFFALO WILD WINGS
GRILL AND BAR
68 N. Harrison Road
Applicant: David D. Pratt
City #080-03, Ward 2
Series 12
Action must be taken by: November 24, 2003
Public Opinion: Protests Filed | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
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(c) Special Event(s)

- | | | |
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| (1) | NORTH FOURTH AVENUE
MERCHANTS ASSOCIATION
4th Avenue, between 9th Street
and University Boulevard
Applicant: Daniel G. Matlick
City #T100-03, Ward 6
Date of Event: December 12, 2003
December 13, 2003
December 14, 2003 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (2) | SANTA RITA EXCHANGE CLUB
4502 N. 1st Avenue, Rillito Park
Applicant: Richard D. Medran
City #T103-03, Ward 3
Date of Event: November 21, 2003 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |

Kathleen S. Detrick, city clerk, advised that Buffalo Wild Wings Grill and Bar originally had a protest, but the protester had rescinded that protest.

It was moved by Council Member Ronstadt, seconded by Council Member Leal, and carried by a voice vote of 7 to 0, that liquor license applications 7b(1), Buffalo Wild Wings Grill and Bar; 7c(1), North Fourth Avenue Merchants Association; and 7c(2), Santa Rita Exchange Club, be forwarded to the state department of liquor licenses and control with a recommendation for approval.

8. ZONING: (C9-03-13) ISAACSON – VOYAGER ROAD, RX-1 TO SR AND R-2

Mayor Walkup announced that city manager's communication number 593, dated November 17, 2003, would be received into and made a part of the record. He also announced that this was a request to rezone property located on the south side of Voyager Road at Pantano Road alignment. The zoning examiner and city manager recommend approval subject to certain conditions. He asked if the applicant or a representative was present and if so, were they aware of and amenable to the proposed standard conditions.

Michael Marks, MJM Consulting, representing the property owner, Mr. Ike Isaacson, said they were acceptable to all of the conditions. This rezoning had come to the council with a recommendation for approval by city staff. The request conforms to the area plan, which was amended in favor of this request earlier in the year and unanimously approved by the council. The applicant intends to develop the property in compliance with all of the applicable regulations.

Mayor Walkup asked the council's pleasure.

Vice Mayor Scott said she thought the council had heard from the applicant that this is a rezoning only and it does not deal with the specifics, which were still to be addressed. She asked staff if that was correct.

Ernie Duarte, developmental services director, said that was correct. Approval of this request would authorize the applicant to proceed with the development of a plan. Subsequent to the mayor and council's action, should it decide to approve the request, there would be a tentative plat process and a final plat process, as well as a rezoning ordinance, which would come to the council.

Vice Mayor Scott said if there were any unanswered or questionable items in the subject document they would be dealt with in a proper manner dealing with all of the laws, rules, regulations, ordinances and so forth as set forth in the community. She asked if that was correct.

Mr. Duarte said that was correct and in addition to the conditions associated with the zoning authorization and imposed by the mayor and council, staff would be looking at the code requirements that are adopted by the mayor and council through that tentative plat process.

Vice Mayor Scott said therefore, the obvious was that no permits would ever be issued based on the approval of the subject request.

Mr. Duarte said that was correct.

Vice Mayor Scott thanked the developer and those people involved in the process. She said this was the beginning of a process. It was simply the changing of the zoning on the land to another zoning.

It was moved by Vice Mayor Scott, seconded by Council Member Dunbar, that in zoning case C9-03-13, staff be directed to prepare an ordinance rezoning the subject property from RX-1 to SR subject to the standard conditions recommended by the city manager.

Council Member West said she had no objections to this project, she was sure it would be a good one. However, page two of the manager's communication said that the conceptual stage of the design of the project, the location of the significant natural areas within the North Fork of Airport Wash, had not been identified. Final survey design and engineering of the subdivision and golf course may identify compliance issues with the environmental resource zone that may preclude development of the project as proposed. She said she understood what Vice Mayor Scott was saying about the plan being a concept and continued that the conclusion of the staff report said that significant redesign of the project may be required. Authorization by the mayor and council is a conceptual approval only and should not be interpreted as overriding the environmental resource zone. Council Member West said her concern was that the council had on so many other occasions required some work and in this particular case the environmental resource zone applies. She thought the council should be consistent and work these things out ahead of time, before they started moving this request down the track. Indeed, in the subject part of the community there are a lot of drainage issues, a lot of natural drainage ways that need to be taken into account. While the project sounded like a very good project, and she was certainly not against it, she thought the council needed to look at flood control and watershed protection.

A substitute motion was made by Council Member West and seconded by Council Member Ronstadt to continue this item.

Mayor Walkup asked if there was any discussion.

Vice Mayor Scott asked for further clarification on the matters that Council Member West brought up. Staff had said that this item was simply a rezoning request, that it is not delineated and that all of those matters would be dealt with, as required by the rules and regulations for a project of this size. She was sure that Council Member West and Council Member Ronstadt and perhaps other council members, had been out to the site to see exactly what it was. She was sure they appreciated the magnitude of what it is and that her office has been aware of the issues that have been brought forward to date. They have been summarily clear from the very beginning that any encroachment into washes and all the rest will not be tolerated if they are outside or affected at all by any of the rules, regulations and documents at hand. She certainly appreciated Council Member West's concerns and knew she was acting with good intentions, but she did not believe that simply moving this request forward would mean that there would be encroachment of any kind. She asked if that was correct.

Peter Gavin, zoning examiner, said that was correct. As Mr. Duarte eluded, all of the requirements in the *Land Use Code* and in the floodplain ordinance would have to be complied with before the tentative plat is approved and an ordinance is submitted to the council. A drainage report will have to be done.

Council Member West said it was her understanding that there were going to be three holes of a golf course in the wash as well as a wall and that was a concern. She thought some design needed to be looked at. She reiterated that she believes in being consistent on rezoning requests and that is why she asked for a continuance. In all due respect, she knew that Vice Mayor Scott's office had worked on the request, but no one ever came to her office. She did not know about any of the rest of the council members, but with a development like the subject request, she needed more information. She had

talked to Mr. Marks and he assured her that he would be happy to sit down and talk with her about it and explain how the applicant plans to comply. She was certainly very willing to do that, but she wished it had been done before this meeting.

Mayor Walkup asked if there was any further discussion.

Council Member Ronstadt said he spoke to Council Member West before the meeting and it rather sparked his thoughts and memory. He pointed out that following the rules had yielded West View, following the rules had yielded River View, and recently, members of the council have been very concerned about detention/retention issues and drainage, and those things had not yet been integrated into the rules. To sit and say they would follow the rules could mean they would see a final plat that could be unacceptable and they would not have anything to say about it. The rules do not yet address these significant issues. He thought it would be wise to slow things down and make sure that the concerns the council did not have time to incorporate in the rules were addressed. To say they are following the rules would not get them where they need to be and down the line neighbors will be coming up and saying the council let it pass when they knew there were issues that the *Land Use Code* did not address, such as retention/detention. That was a major concern. They did not address the issues that were inherent in final plats, which could not be changed once they got through the administrative process. To say they were following the rules was fine, but they had already recognized that the rules are not sufficient to specifically address the detention/retention and drainage issues. He thought it was the path of wisdom to slow this case down and make sure those issues are addressed to the council's satisfaction.

Council Member West asked that in January, staff bring a presentation to the council on ways that they might work with some of these issues more clearly and carefully. She thought they needed more tools so that things like this do not happen and someone does not come to them with something that is not even conceptual. She did not think they should let that happen. Mr. House and the city engineers should be helping the council with this.

Mayor Walkup asked about the golf course in the wash and if this request put the council in a position like the one they were in with the West View development, which was extraordinarily uncomfortable for everyone on the council.

Mr. Duarte, addressing the comparison with River View and West View Estates, said while the issues were very similar in both of those projects, retention/detention, and environmental resource zones, in both of those cases there was no rezoning in process. The properties were hard zoned so the council did not get a chance to look at those cases one more time before voting on the final plat. The issue of the golf course on the preliminary development plan within the North Fork Airport Wash did in fact cause staff some concern and they brought that to Mr. Marks' attention. He acknowledged that there will have to be some additional analysis in that area before they can move forward with an approved tentative plat and bring a rezoning ordinance to the council. Some additional work and review has to be done in that regard before staff says that a golf course is okay.

Council Member Leal asked if the city was losing control.

Mr. Duarte said not at this point.

Mayor Walkup asked if there was further discussion on the substitute motion to continue this item.

Kathleen S. Detrick, city clerk, asked if Council Member West had a specific date in mind.

Council Member West asked if Mr. Marks had any idea of when he could get back to the council after working with staff.

Mr. Marks said he could provide an answer if he knew specifically what was needed. To expand on what had already been provided and to provide a little context, he said the applicant had been aware of this issue from the onset. They have been talking with staff extensively on this issue. In anticipation of this issue arising, they had an environmentalist evaluate the vegetation in the wash and they had a hydrologist evaluate the conditions in the wash. Reports were prepared by the environmentalist and the hydrologist. These were submitted and included with the environmental resource report submitted with their application. They did have the background and they did provide the information to staff. They understand that additional information such as a mitigation report, which was an integral part of the environmental resource zone, was needed. As far as what might be put together in the short term to support a continuance, he said whatever the council might specifically request he would certainly comply with, but he was not sure what that was.

Council Member West said she thought it was time for the council to start being consistent. She stated that Council Member Ronstadt said it very well in page two of the staff report referencing the hydrologic conditions of two washes. She was aware that Mr. Marks worked with Karen Ceasare, on the proposal and she had some respect for her, but she did not think that the council ought to be moving it forward without some work up front.

Mayor Walkup asked for the roll call on the substitute motion to continue this item.

Upon roll call, the results were:

Aye: Council Members West and Ronstadt; Mayor Walkup

Nay: Council Members Ibarra, Dunbar, Leal; and Vice Mayor Scott

Absent/Excused: None

The motion to continue failed by a roll call vote of 4 to 3.

Mayor Walkup asked for a roll call on the motion that in zoning case C9-03-13, staff be directed to prepare an ordinance rezoning the subject property from RX-1 to SR subject to the standard conditions recommended by the city manager.

Council Member Dunbar asked to explain her vote. She said she absolutely agreed with what Council Member Ronstadt said. She thinks the points he and Council Member West were making were true, but at this point, she did not think the council wanted to punish the applicant. This request was for a zoning change and the council did

not have that with the West View case. She was going to vote yes on the motion, but she wanted to remind staff that changes needed to be made so that the council did not have another River View/West View problem in the future.

Upon roll call, the results were:

Aye: Council Members Ibarra, Dunbar, and Leal; Vice Mayor Scott

Nay: Council Members West and Ronstadt; Mayor Walkup

Absent/Excused: None

The motion was declared carried by a roll call vote of 4 to 3.

9. ZONING: (C9-02-16) TM HEALTHCARE – GLENN STREET, R-1 TO O2

Mayor Walkup announced that city manager's communication number 596, dated November 17, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9912 by number and title only.

Ordinance No. 9912

Relating to zoning: amending zoning district boundaries in the area located on the south side of Glenn Street, east of the Alamo Wash in Case C9-02-16, TM Healthcare – Glenn Street, R-1 to O-2; and setting an effective date.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member West, seconded by Council Member Dunbar, that ordinance no. 9912 be passed and adopted.

Mayor Walkup asked if there was any discussion.

Council Member Ibarra said his father-in-law lives within 300 feet of the subject property and asked if that constituted a conflict of interest for him.

Michael House, city attorney, said it was difficult to say without knowing what effect the rezoning will have on his father-in-law's property and in that case, he would suggest that Council Member Ibarra not participate.

Upon roll call, the results were:

Aye: Council Members West, Dunbar, Leal, and Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Ordinance no. 9912 was declared passed and adopted by a roll call vote of 6 to 0, (Council Member Ibarra not voting due to a potential conflict of interest).

10. RIO NUEVO: SUBMISSION OF GRANT APPLICATION FOR FEDERAL BROOWNFIELDS FUNDS FOR TWO SITE INVESTIGATIONS

Mayor Walkup announced that city manager's communication number 592, dated November 17, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution no. 19719 by number and title only.

Resolution No. 19719

Relating to redevelopment; approving and authorizing submission of a Grant Application to the U.S. Environmental Protection Agency for federal Brownfields funds for the redevelopment of various sites within the Rio Nuevo boundaries; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Council Member West, that ordinance no. 19719 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Resolution No. 19719 was declared passed and adopted by a roll call vote of 7 to 0.

11. TUCSON CODE: AMENDING (CHAPTER 28) RELATING TO THE TUCSON PROCUREMENT CODE

Mayor Walkup announced that city manager's communication number 598, dated November 17, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9913 by number and title only.

Ordinance No. 9913

Relating to procurement; amending the *Tucson Code*, Chapter 28, in its entirety; and declaring an emergency.

Kathleen S. Detrick, city clerk, announced a correction to the ordinance, section 28-157, page 72, entitled "Wages", paragraph D., the second line of the first sentence should read, "upon the cost of labor" as opposed to "cost of living."

Mayor Walkup announced that staff had a brief presentation on this item.

Michael Letcher, deputy city manager, said the procurement department director would make a very brief presentation, but first he wanted to mention that this item has been a priority for the council as part of the city's strategic plan. Mr. Casper has had extensive public outreach on this issue and the changes have been posted on the Internet. From what staff can tell from the outreach, the recommended changes have been received positively by the community.

Wayne Casper, procurement department director, said the city of Tucson adopted its procurement code a little over 10 years ago and it was based on the American Bar Association's model procurement code. That code has served the city quite well for 10 years. The procurement department has an outstanding reputation, both within the city of Tucson and nationally for the job it does. However, 10 years is a long time and a lot of things have happened. One area is that the e-commerce or e-government has changed things. When the code was written 10 years ago, they were not thinking too much about the Internet. In addition, Arizona statutes govern the city's procurement of construction and recently, in the last two years, there had been some significant and fundamental changes in the acquisition of construction. Finally, the American Bar Association itself went back to the basic model procurement code and made some changes in light of the passing times. The proposed ordinance reflects many of these changes.

Highlighting the major changes, Mr. Casper said one of the overall directions city staff is trying to take is to increase the area of best value. They are getting away from the old concept of government buying strictly low bid and ending up buying materials, equipment and services that are not the best value for the customer, city departments, or the citizens of Tucson. They have moved a little bit away from that toward best value. Another area of change is the bid threshold, which is the amount that staff has to go off of the formal bid. It used to be \$10,000. That was established over 10 years ago, but \$10,000 today is not the same as it was 10 years ago, so staff is recommending that the threshold where the formal bidding is done be increased from \$10,000 to \$25,000.

The last area he wanted to touch on was the change that was made in the living wage. When the living wage ordinance was adopted, about four or five years ago, there was an automatic price adjuster with the living wage amount. It started at \$8 with insurance and \$9 without insurance. That amount is adjusted every year based upon the consumer price index. That index has increased faster than the rates of wages that the city employees receive, so staff was recommending that it be tied to the cost of labor adjustment that city employees receive.

He said those were probably the highlights. He thought one of the primary purposes of the procurement code is that it creates a balance. Since the procurement department spends public monies, it has to serve the city departments, who need the procurement department to buy things for them in order to do their jobs. At the same time, the procurement department is spending public money, so they are the guardians of the public trust. The integrity of the process, and openness and competitiveness, is also

important. The procurement code is an excellent document. It provides that balance for the needs of the city as well as protecting the interest of the public.

Mayor Walkup asked if there were any questions.

Council Member West said the council was going to be discussing an item on the council's study session agenda after this meeting and asked staff to comment.

Michael Letcher, deputy city manager, said if the item on the study session was approved, it would have to be brought back and adopted as a separate ordinance. It is not covered by the proposed ordinance.

Council Member West said she knew it was not, but she wanted to confirm that it could be added.

Mr. Letcher said it could be.

Council Member West said along with that there were a few terms that she had questions about. The council's material mentioned a provision for exclusive negotiations. She asked what that meant.

Mr. Casper said when the procurement code was originally adopted the city had a request for proposals process where staff would do concurrent negotiations with firms as part of the procurement process itself. Over the years, they have been involved in some procurements that are much more complex and they do not work well using that scenario. An example would be the city's district heating and cooling contract at the Tucson Convention Center, which is contracted to the private sector. Those contracts become very involved and they are very complicated. Under the subject proposal, staff would go through a competitive process, but once it is narrowed down to one firm they would then have exclusive negotiations with that one firm on the contract.

Council Member West said one other point worth mentioning was that article 10 of intergovernmental procurements says cooperative purchasing is expanded to include agreements with public purchasing alliances outside of Arizona, including national cooperative contracts. She asked if he could give an example of how that might work.

Mr. Casper said he could and the timing was excellent. There are national alliances that are trying to take the cooperative purchasing concept one step further and go national rather than just within a state. One example is the Innovation Group. They have a national alliance and staff is participating with them on a request for proposals for a copier machine. It seems rather mundane, but it is very important and by going through the Innovation Group staff hopes to be able to get prices based on a national contract to lower the prices they receive when they buy. Other people would also be using the contract throughout the country.

Council Member West said that is something the city should publicize to let people know how taxpayer dollars are being spent and that staff is trying to be frugal when they spend those dollars. She was glad Mr. Casper had pointed that out. One of the things she noticed was on page 31. She could not help but think of the blue barrel recycling and the protest in writing and so on, and all the information. She asked if there is a way to

prevent a future debacle because the city ended up with an inferior product. The wheels are falling off and that tells her that there was a product that the city had to include that was not of the best quality. She asked if there was a way to prevent that in the proposed ordinance.

Mr. Casper said one of the changes staff made was that the way the code is currently written, when a protest is filed and an appeal there is an automatic stay. It stops the city's procurement action unless staff makes a determination that they have to proceed. The proposed ordinance reverses that, so that there is no stay and staff can continue with the procurement unless the staff makes a determination that to continue would not be in the best interest of the city. That should help quite a bit in situations like the blue barrel.

Council Member West said that was good and she congratulated Mr. Casper for the fine job he had done and for the national recognition the procurement office received, which was largely due to him and his great staff.

It was moved by Council Member West, seconded by Council Member Dunbar, that ordinance no. 9913 be passed and adopted.

Mayor Walkup asked what provision had been made for preference to local suppliers. He asked staff to explain how that works.

Mr. Casper said within the procurement code there were no preferences for geographic local suppliers with a couple of exceptions, one being the Minority and Women Business Enterprise Program. There is a preference for that and a firm has to be within the Tucson geographic area to be certified as an MWBE firm. The second area is in the acquisition of architectural engineering services. Five preference points are given in that area. Other than that, there were no local preferences. However, the procurement office has a policy to encourage local business in every way possible. For example, when they have contracts under the threshold, currently the \$10,000, which he hoped would soon be \$25,000, they limit those quotes to local firms as long as they have three local firms from which to get the quotes. In effect, that works as a preference. Statistics show that the amount of business the city of Tucson does with local firms compares very favorably with other jurisdictions in the Tucson valley. The city of Tucson is one of the highest in terms of local purchases.

Mayor Walkup noted that the biz links capability certainly helps local firms attract business from other local firms. He noted that Mr. Casper had explained to him that one of the reasons the city does not do that is because it could put many local suppliers at a disadvantage for bidding jobs outside of the area, meaning reciprocity. He asked Mr. Casper to explain.

Mr. Casper said that was correct. There are several states, he thought 32 or 34, that have reciprocity laws. Those laws work in a way that if the city of Tucson had a geographic preference, when a vendor from Tucson did business with one of those states that law would be turned around and used against them competitively. If Tucson had a five-percent preference, it would work a 5 percent preference against them in doing business in one of those other states.

Mayor Walkup said he wanted to be sure people knew that. He asked if there was any further discussion.

Vice Mayor Scott asked about the living wage portion of the ordinance. She asked why it was tied to the city's indexing rather than a market.

Mr. Casper said a good example is that this year city employees are not receiving a cost of labor adjustment to their salaries. If the law remains as it currently is, the city's contract living wage employees will receive a 2.2 percent adjustment based on the CPI index.

Vice Mayor Scott asked if Mr. Kuliesh, could comment on that. Did it change anything for him and his group?

Jim Kuliesh, said he and Mr. Casper met a month ago and Mr. Casper shared the changes in the procurement code, which Mr. Kuliesh had no problem with on the part of the Alliance of Construction Trades.

Mayor Walkup asked for a roll call on the motion to pass and adopt ordinance 9913.

Upon roll call, the results were:

Aye: Council Members West, Dunbar, and Ronstadt; Mayor Walkup

Nay: Council Members Ibarra and Leal; Vice Mayor Scott

Absent/Excused: None

Ordinance no. 9913 was declared passed and adopted by a roll call vote of 4 to 3.

For the purpose of the emergency clause and that purpose only, Mayor Walkup asked for a second roll call on the motion to pass and adopt ordinance no. 9913.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Ordinance no. 9913 was declared passed and adopted with the emergency clause by a roll call vote of 7 to 0.

12. APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES

Mayor Walkup announced that city manager's communication number 597, dated November 17, 2003, would be received into and made a part of the record. He asked if there were any personal appointments.

Vice Mayor Scott announced her personal appointment of Michael Tone to the Rio Nuevo Citizens Advisory Committee. The person she had appointed is leaving the state.

Mayor Walkup asked if there were any other appointments. There were none.

13. CALL TO THE AUDIENCE

Mayor Walkup announced that this was the time any member of the public was allowed to address the mayor and council on any issue. Speakers would be limited to three-minute presentations. He called on the first speaker.

A. Landlord/Tenant Responsibilities and No Permission Required

Bill Katzel, said at the first call to the audience Council Member Ibarra asked the city manager for a copy of the lease between the city and the US Border Patrol concerning the subject facility. He also stated that he did not need Mr. Katzel's permission to tour the subject facility. Mr. Katzel said that was absolutely correct, Council Member Ibarra did not need his permission to tour the dump at the subject facility, nor did he need Mr. Katzel's permission to get the problem at the subject facility, which is in Council Member Ibarra's ward, corrected. As for the responsibilities under the lease, he said it really did not matter whose responsibility it was to cleanup the dump and make the repairs to the facility. Under landlord/tenant relationships, if the tenant abdicates his responsibilities the landlord has the responsibility to cure the problem and take remedies against the tenant. This is a health, safety, and welfare problem and all he was trying to do was advocate for the border patrol and members of the public that have to use and work at the facility. He said they should stop taking potshots and get on with correcting the problems.

B. Rio Nuevo

Michael Tomey, said apparently, there will be American Indian artifacts in the development by A-Mountain. American Indian religion has a great respect for nature and he did not think that was going to be happening at Rio Nuevo. He said the Rio Nuevo project seemed rather chaotic because of the implicit idea that the university is a purveyor of services and culture, a kind of trendsetter for society. He questioned the cultural and natural mix of Arizona life in the hands of science per se. American Indian culture does not appreciate abuse of living creatures in the laboratories. Mr. Tomey referenced a saying of a chief who died awhile ago. He met the chief, a beautiful man and spirit, and these things need to be taken care of and they are not. He wanted to mention that he did not know about it a year ago, integrated objects using laser microcircuits on chips. It is extremely small, an extremely delicate operation. The strips are one micrometer wide that laser beams run along inside of something that replaces all of the electronic stuff. Transistors and so forth can be added. Practically everything that is needed for computers can be put on little chips hundreds of thousands of times smaller

and there has been 3 years of work already that has gone on in laser objects. They use a lot of sub straits to bend a little laser beam into with a frequency that is ten percent a laser wave length in frequency. At fifteen cycles per second dropped down to get into the instrumentation and nearly ten to fourteen cycles per second can be worked with. Ten to one hundred super computers can be put into a briefcase. It is very small, very minute. Through years of research, they have almost all of the technology down. He did not know about it until a year ago when he ran into it and it was surprising. That is the kind of thing Arizona needs to spend money on.

With a \$9,900,000 deficit they cannot do what they want about various things up in the Phoenix legislature and they have mentioned that in the budget considerations that are going on now. Maybe some kind of changes can be made in Rio Nuevo, which is the kind of thing that the region needs to get into, bringing the resources into something that is going to bring back more rewards than just people getting paid five dollars. Twenty-five thousand is enough to cover the kind of research that is done in laser optics and Tucson is a great place for optical industry and, he thought, the semiconductors. It is very potent and has had a lot of development and all of the things necessary have been in the works and could proceed to laboratory production of a small and powerful computer. The budget that the council was talking about might be able to include things like astronomy, astronomical observation, and planetarium to look at the stars and it is nothing that anyone would be upset about. There is something out there that is fantastic.

Mayor Walkup asked if anyone else wished to address the council. There was no one.

14. ADJOURNMENT: 3:08 p.m.

Mayor Walkup announced that the next regularly scheduled meeting of the Mayor and Council would be held on Monday, November 24, 2003, at 7:30 p.m. in the Mayor and Council Chambers in City Hall, 255 W. Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the city of Tucson, Arizona, held on the 17th day of November, 2003, and do hereby certify that it is an accurate transcription of the magnetic tape record of said meeting.

MANAGEMENT ASSISTANT

KSD:DD:mjv
Pr agnst tp:lr